



association pour la prévention de la torture  
asociación para la prevención de la tortura  
association for the prevention of torture

## UN Human Rights Committee 110<sup>th</sup> Session (10 - 28 March 2014)

### APT submission on Kyrgyzstan

Alternative report from the Association for the Prevention of Torture (APT) to the Human Rights Committee on the national implementation of articles 2(2) and 7 of the Covenant in relation to the examination of Kyrgyzstan by the Committee during its 110<sup>th</sup> session in Geneva.

Submitted 13 February 2014.

***The Association for the Prevention of Torture (APT)** is an independent NGO based in Geneva, working globally to prevent torture and other ill-treatment. To achieve this vision the organisation works within four integrated areas:*

*Transparency in places of detention - Promoting a system of visits by independent experts to prisons and other places where people are held in detention.*

*Effective laws and policies - Lobbying with governments to ratify the Optional Protocol to the UN Convention against Torture and to adopt legal and procedural standards to prevent torture.*

*Capacity for prevention - Creating partnerships for prevention within countries, bringing governments, police services, judges and lawyers, national human rights institutions and civil society together in the fight against torture.*

*Informed public debate – Reinforcing support against torture through active and informed public debates, responding to the corrosion of international standards, particularly with parliamentarians and the media.*

## **1. Summary**

The Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is recognised as a particularly effective way of preventing torture.

As a State party to the OPCAT, Kyrgyzstan has made positive progress in the establishment of a national body for the prevention of torture, and received the UN Subcommittee on Prevention of Torture in September 2012.

The UN Special Rapporteur on Torture undertook a mission to Kyrgyzstan in December 2011, and the OHCHR have since drafted an Action Plan for the implementation of recommendations by the Special Rapporteur. However, the level of progress is uncertain.

## **2. The role of the OPCAT in the prevention of torture**

The risk of torture and other ill-treatment exist in all situations where people are deprived of their liberty, particularly in places closed to the outside world.

The Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) was adopted by the UN General Assembly in 2002 and came into force in 2006. It aims to minimise the risks of abuse by opening up prisons, police stations, mental health institutions and all other places of detention to examination by independent watchdogs.

States Parties to the OPCAT allow two complementary forms of examination. First, by the UN Subcommittee on Prevention of Torture (SPT), and second, by locally established national preventive mechanisms (NPMs).

The basic premise behind the OPCAT is that the more open and transparent places of detention are, the lesser the risk for abuse.

## **3. Background information on Kyrgyzstan**

### **a. Implementation of the OPCAT**

Kyrgyzstan ratified the OPCAT on 29 December 2008, and has succeeded in developing a well thought-out vision of a NPM as well as a related law which largely conforms to the provisions of the OPCAT.

The proposed NPM comprises a National Centre for the Prevention of Torture and a Coordination Council for the Prevention of Torture. While the latter will undertake the day-to-day preventive work of the NPM, the Coordination Council has the vitally important role of spearheading the NPM's advocacy and policy activities and acting as its interface with the authorities.

From the NPM law it is apparent that the establishment, structure and functioning of the proposed NPM have been carefully thought through by its authors and much detail is provided in this respect. Encouragingly, as recommended by the UN Subcommittee on Prevention of Torture (SPT), the NPM model emerged as a result of exhaustive open, transparent and inclusive national discussions.

The law on the establishment of the NPM had its third and final reading in the Kyrgyz parliament on 8 June 2012. Thereafter, the signature of the president took place on 12 July 2012. In theory, the Kyrgyz authorities had three months in order to recruit the staff and members of future NPM and set up the institution. Unfortunately, this process was hampered by several factors, not least owing to the collapse of the ruling government coalition in August 2012 and the absence of any earmarked funding in the budget for 2012.

Despite this initial lack of progress, there were some positive developments in this respect in the first half of 2013 to recruit the 11-person Coordination Council for the Prevention of Torture, a process which was completed by April. The Coordination Council met for the first time on 16 April 2013 when it began the process of developing its internal rules of procedure, among other matters. It also elected a Chairperson and Deputy Chairperson and, crucially, initiated the process of recruiting the all-important position of Director of the other component of the NPM, the National Centre for the Prevention of Torture, which is a full-time position. This process was completed by 2 August 2013 when a former regional employee of the Ombudsperson's Office, Bakyt Rysbekov, was recruited for the vacant position.

Unfortunately, in the second half of 2013 the recruitment of the remaining staff of the National Centre for the Prevention of Torture did not commence due to the absence of a budget for the NPM and office space to house staff. Nonetheless, in September 2013 the Coordination Council and Director of the National Centre wrote to the Kyrgyz Prime Minister, Jantoro Satybaldiev, with a view to trying to resolve this lack of resources and space. Office space was reportedly put at the disposal of the National Centre for the Prevention of Torture in November 2013, although no funds were available for its renovation owing to the absence of any NPM budget.

These pressing issues were also raised by the UN Committee against Torture in Geneva during its examination of Kyrgyzstan's second periodic report in November 2013. In its Concluding Observations the UN Committee against Torture stated the following:

*“While welcoming the establishment of the National Centre of the Kyrgyz Republic for the Prevention of Torture, the Committee remains concerned that it has not yet begun activities as the country's national preventive mechanism, mainly due to the inadequate budget (art. 16).*

*The State should ensure that: (a) the National Centre for the Prevention of Torture has the necessary financial, human and material resources to fulfil its mandate independently and effectively; and (b) all persons involved in the*

*administration of places of detention are aware of the rights of members of the National Centre for the Prevention of Torture.”<sup>1</sup>*

In early February 2014, the APT learned that the issue of financing had to some extent been resolved. Ulugbek Azimov, the Chair of the Coordination Council informed the organization that financial resources had been allocated to the NPM in the 2014 state budget. As a result, the process of recruiting the full-time staff of National Centre for the Prevention of Torture had been initiated and was expected to be completed in March 2014.

A further notable OPCAT-related development in the country can be seen in the form of the visit of the SPT to Kyrgyzstan in September 2012. The SPT transmitted its confidential visit report to the Kyrgyz authorities on 30 May 2013, but is still awaiting the response of the Kyrgyz authorities. At the time of writing, the SPT’s visit report remained confidential.

#### **b. The 2011 Visit of the Special Rapporteur on Torture to Kyrgyzstan**

The much anticipated visit of the UN Special Rapporteur on Torture, Professor Juan Méndez, to Kyrgyzstan took place in December 2011 and the report of his visit became public in February 2012. As Kyrgyzstan was last examined by the UN Human Rights Committee as long ago as 2000, Professor Méndez’ visit report represents an exceptionally important document. It was therefore deemed essential that there should be swift and systematic follow-up to these recommendations.

With this aim in mind, the APT, OHCHR’s Regional Office in Central Asia, and a range of other international and domestic organisations organised a follow-up event on 21 May 2012 in Bishkek on ‘The Implementation of the Recommendations of the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment following his Mission from 5-13 December 2011, and other Human Rights Mechanisms for the Prevention and Combating of Torture’.

By convening a small group of national civil society experts, OHCHR created a draft Action Plan which outlined Professor Méndez’ and the UPR recommendations, and identified the appropriate action which should be taken (and by whom) in order to implement them in practice. Several weeks prior to the event, the draft Action Plan was widely distributed among government and non-government actors for their comments. This Action Plan was subsequently used by the organisers of the 21 May 2012 round-table event as the basis of the day’s discussion. On the whole, the day’s discussion was focussed, fluid and, with a few exceptions, generally constructive, with participation from an array of relevant national actors, including civil society.

It is relevant to note that in its reply to the List of Issues, Kyrgyzstan informed the Committee of the following:

*“Currently, the process of approval of the very important document, the Action Plan on the implementation of the recommendations drawn by Mr*

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<sup>1</sup> Please see UN Doc. CAT/C/KGZ/CO/2, 20 December 2013 – paragraph 15.

*Juan Mendez, the UN Special Rapporteur, following his visit to Kyrgyzstan in December 2011 is taking place.*<sup>2</sup>

While welcoming the move to devise and approve this Action Plan, what is unclear at the time of writing, however, is both its status and the extent to which concrete progress has been achieved to act on the recommendations of UN Special Rapporteur on Torture, a point which would merit further inquiry.

#### **4. Suggested recommendations**

In light of the background material above, the APT proposes that the Human Rights Committee make the following recommendations to the Kyrgyz delegation:

##### **Articles 2(2) and 7**

- Kyrgyzstan should expedite the process of putting in place the overall Kyrgyz NPM, particularly the National Centre for the Prevention of Torture;
- Kyrgyzstan should ensure that the NPM is adequately financed in future State budgets to ensure that it can effectively function;
- Kyrgyzstan should make public the report of the visit of the SPT to Kyrgyzstan;
- Once approved by parliament, Kyrgyzstan should take all measures to act on the document, 'Action Plan on the implementation of the recommendations drawn by Mr Juan Mendez, the UN Special Rapporteur'.

12-02-14

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<sup>2</sup> UN Doc. CCPR/C/KGZ/Q/2/Add.1, 29 January 2014, para.112.